



Federal Communications Commission
Washington, D.C. 20554

May 22, 2009

DA 09-1123

Mr. Thomas R. Morrison
6 Rudolph Terrace
Yonkers, NY 10701

Dear Mr. Morrison:

This is in response to your e-mail dated April 15, 2009.¹ You request reconsideration of our letter dated March 27, 2009,² which declined to act on your request that the Commission find that the building permit requirements of the City of Yonkers, New York (City) do not comply with the Commission's policy regarding local regulation of amateur radio facilities. For the reasons set forth below, we dismiss your petition for reconsideration.

By way of background, we declined to act on your first request for declaratory ruling regarding the antenna tower at your residence by letter dated January 31, 2007.³ By letter dated December 5, 2008, you again requested a declaratory ruling, based on subsequent actions by the City. In declining to act on your second request, we again explained that the Commission's PRB-1 decision⁴ requires that local regulation of amateur radio facilities be the minimum practicable to accomplish the local authority's legitimate purpose, but allows local authorities to determine in the first instance what actions constitute "reasonable accommodation."⁵ We also concluded that the fact that the City had subsequently denied your request for a special use permit and indicted you for a misdemeanor did not change our conclusion that, under the PRB-1 decision, you had not presented an appropriate matter for Commission involvement.⁶

In your most recent correspondence, you note that you agreed, in order to settle the criminal case against you without incarceration, not to use the antenna until the City Planning Board has approved the antenna structure.⁷ You assert that local authorities have overstepped their jurisdiction by demanding this stipulation, and encroached upon the "sole authority" of the Commission to act "in matters regarding radio transmission." You state that this development warrants Commission action.

¹ E-mail dated Apr. 15, 2009 from Thomas Morrison to Scot Stone.

² Thomas R. Morrison, *Letter*, DA 09-680 (WTB MD rel. Mar. 27, 2009) (*2009 Letter*).

³ Letter dated Jan. 31, 2007 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Thomas R. Morrison.

⁴ Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, *Memorandum Opinion and Order*, PRB-1, 101 F.C.C. 2d 52 (1985).

⁵ See *2009 Letter* at 1.

⁶ *Id.*

⁷ The stipulation recites that it was agreed to by the parties. You indicate in your petition for reconsideration that you did not agree to this condition. If in fact you did not agree to it, you should raise the matter with the criminal court.

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We dismiss the petition for reconsideration. First, we note that the petition was filed in the wrong location. The Commission's Rules require that petitions for reconsideration be filed with the Office of the Secretary,⁸ and warn persons filing documents with the Commission that filings submitted to the wrong location will not be processed.⁹ We therefore dismiss the petition as misfiled.¹⁰

Moreover, we conclude that the criminal court stipulation does not affect our previous conclusion that you have not presented an appropriate matter for Commission involvement with respect to your antenna tower. The stipulation does not pertain to the validity of your license, but only to the use of the antenna tower at your residence. Under PRB-1, decisions regarding construction and land use regulations are to be reviewed by local tribunals.

Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration submitted by Thomas Morrison on April 15, 2009, IS DISMISSED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁸ 47 C.F.R. § 1.106(i).

⁹ 47 C.F.R. § 0.401; *see also* 47 C.F.R. § 1.7 ("documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission").

¹⁰ *See, e.g.*, Thomas K. Kurian, *Order on Further Reconsideration*, 22 FCC Rcd 13223, 13224 ¶ 3 (WTB MD 2007).